SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964

No. 96

RESERVE LIFE INSURANCE COMPANY,
APPELLANT,

vs.

STANLEY J. BOWERS, TAX COMMISSIONER
OF OHIO.

APPEAL FROM THE SUPREME COURT OF THE STATE OF OHIO

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[fol. 1]

BEFORE THE TAX COMMISSIONER OF OHIO

1 THIS RETURN TO BE FILED WITH THE DEPARTMENT OF TAXATION, ROOM 1030, OHIO DEPARTMENTS BUILDING, COLUMBUS (15) OHIO, BETWEEN FEBRUARY 15 AND APRIL 30, 1960

THE LAW IMPOSES A FIFTY PER CENT PENALTY FOR FAILURE TO FILE A RETURN. IN ADDITION THE LAW ALSO IMPOSES A CHARGE OF ONE-HALF OF ONE PER CENT PER MONTH WHEN A RETURN IS DELINQUENT OR PROPERTY HAS BEEN OMITTED.

Return No. R-191

~~1963-64 Ex. Session Law 60 Ref. 57-16 - 57-19 - 57-20~~

STATE OF OHIO

Title as — 1960

PERSONAL PROPERTY TAX RETURN

OF

R&R

NAME OF CORPORATION RESERVE LIFE INSURANCE CO.

ADDRESS OF PRINCIPAL ACCOUNTING OFFICE 4C3 S. AKARD ST.

CITY AND STATE DALLAS 1, TEXAS

Name of former owner if property was listed by another in 1959.

ASSESSED

DATE INCORPORATED OR QUALIFIED IN OHIO _____ INCORPORATED IN STATE OF _____

OHIO CHARTER NUMBER _____

EXTENSION TO _____ 1960. NUMBER _____

CONSOLIDATED CORPORATION RETURN . . . . . ☐

Stanley J. Bowers
DEPARTMENT OF TAXATION (DO NOT WRITE BELOW)

Check No.	V	Office Audit	11/16
Typed Sheets Checked	163 11/16	Detailed Posting	
Pre-Assessment Audit	2/11/16	To Be Field Audited	
Detailed Checked	1/16	Field Audit Completed	
Computation Checked		Acceptable as Corrected	
		Acceptable as Is	

TAX FORM No. 66. Prescribed by Stanley J. Bowers, Tax Commissioner

TRANSCRIPT
TAX COMMISSIONER

RESERVE LIFE INSURANCE COMPANY — OHIO — YEAR 1948

SCHEDULE 4

FURNITURE AND FIXTURES—MACHINERY & EQUIPMENT — SUPPLIES NOT USED IN MANUFACTURING.

List in this schedule personal property such as office furniture and fixtures, machinery and equipment not listable at 50% of depreciated book value. Inventories of other than Manufacturers or Merchants. Supplies not used in manufacturing. Hotel and Restaurant Equipment, Amusement Equipment, Watercraft, Electrical Equipment used for generating and distributing electricity to others, etc. If value of equipment below is based on "true value" computation, attach detail.

List separately property used in each Taxing District.

County	Taxing District	Type of Business	Description of Property Items	Depreciated Book Value	Description of Property Items	Depreciated Book Value	Description of Property Items	Depreciated Book Value	Total Depreciated Book Value (Dollars Only)	Listed Value 70% of Total Depreciated Book Value (Dollars only 50 of)
Summit		Insurance	Furniture & Fixtures							
Stark		"	"						787	537
Hamilton		"	"						889	888
Butler		"	"						96 788	38 787
Scioto		"	"						889	888
Cuyahoga		"	"						889	888
Franklin		"	"						787	537
Muskingum		"	"						787	537
Montgomery		"	"						889	888
Lucas		"	"						787	537
Allen		"	"						787	537
Erie		"	"						889	888
Mahoning		"	"						889	888
Trumbull		"	"						787	537
Portage		"	"						889	888
Clark		"	"							
Richland		"	"							
Jefferson		"	"							
Lake		"	"							
Ashtabular		"	"							
Licking		"	"							
Lorain		"	"							
Seneca		"	"							
Fairfield		"	"							
Lawrence		"	"							
Marion		"	"							
									33 407	49 388

TRANSCRIPT TAX COMMISSIONER

10

Form No. 96

[fol. 2]

RESERVE LIFE INSURANCE COMPANY

OHIO

YEAR 1938

FURNITURE AND FIXTURES—MACHINERY & EQUIPMENT — SUPPLIES NOT USED IN MANUFACTURING.

List in this schedule personal property such as office furniture and fixtures, machinery and equipment not listable at 50% of depreciated book value, Inventories of other than Manufacturers or Merchants, Supplies not used in manufacturing, Hotel and Restaurant Equipment, Amusement Equipment, Watercraft, Electrical Equipment used for generating and distributing electricity to others, etc. If value of equipment below is based on "true value" computation, attach detail.

List separately property used in each Taxing District.

County	Taxing District	Type of Business	Description of Property Items	Depreciated Book Value	Description of Property Items	Depreciated Book Value	Description of Property Items	Depreciated Book Value	Total Depreciated Book Value (Dollars Only)	Equal Value 70% of Total Depreciated Book Value (Entire value of ...)
Medina		Insurance	Furniture & Fixtures							
Wayne		"	"							
Clermont		"	"							
Highland		"	"							
Fayette		"	"							
Darke		"	"							
Miami		"	"							
Shelby		"	"							
Ashland		"	"							
Sandusky										
Knox										
Huron										
Wood										
Defiance										
Hancock										
Van Wert										
Guernsey										
Muskingum										
Coshocton										
Columbiana										
Belmont										
Tuscarawas										
Knox										
Totals									100	

RECEIVED
TAX COMMISSIONER
TRANSCRIPT
21

SCHEDULE 4

Form No. 903

[fol. 3]

3

[fol. 4]

BEFORE THE BOARD OF TAX APPEALS

DEPARTMENT OF TAXATION, STATE OF OHIO

No. 8885

In the matter of the application of RESERVE LIFE INSURANCE COMPANY, a foreign insurance company, Dallas, Texas, for review and redetermination of increased personal property tax assessments for the years 1948 through 1960, inclusive.

FINAL ORDER—December 19, 1961

This proceeding, being the application of Reserve Life Insurance Company, a foreign insurance company, Dallas, Texas, for review and redetermination of increased personal property tax assessments for the years 1948 through 1960, inclusive, after being duly heard, came on to be reconsidered.

It is the finding of the Tax Commissioner that under date of December 1, 1961, a journal entry was issued respecting this application No. 8885 making certain findings with respect to the assessment of additional charges, pursuant to the provisions of Section 5711.27, Revised Code, for the failure to file returns within the time prescribed by law, for the years 1948 to 1957, inclusive. It is the finding of the Tax Commissioner that the additional charges of 17½% for the years 1948 to 1957, inclusive, were erroneously assessed and, therefore, said entry which failed to reflect same was incorrect and is hereby set aside and held for naught.

Upon reconsideration the Tax Commissioner finds that as a result of audit, increased personal property tax assessments were made against the property of the applicant which property was determined by the Department to be taxable under Schedule 4 of the returns for each of the years in question. In addition, a 5% penalty, reduced from 50%, plus additional charges of 17½% for the years 1948

through 1957, inclusive, 14% for the year 1958, 8% for the year 1959 and 2% for the year 1960 were added to the assessments. The applicant filed an application for review and redetermination pursuant to the provisions of Section 5711.31, Revised Code, objecting to the assessments as made and contending that: (1) the taxing and insurance statutes of the State of Ohio should be read together so as to be consistent, and if this is done the personal property of Reserve Life Insurance Company in the State of Ohio has a value of zero; (2) the personal property tax, as applied to foreign insurance companies, is unconstitutional under Article I, Section 2 of the Ohio Constitution, as the tax is [fol. 5] not levied on domestic insurance companies; and, (3) the personal property tax, as applied to foreign insurance companies, is unconstitutional under the equal protection clause of Section 1 of the Fourteenth Amendment to the United States Constitution, as the tax is not levied on domestic insurance companies.

Upon consideration of the information submitted at and subsequent to the hearings, Section 5701.03, 5709.01, 5711.01, 5711.03, 5711.18 and 5711.22, Revised Code, Department of Taxation Rule 202, and all other available information, the Tax Commissioner finds applicant's first contention is not well taken; that the property in question is subject to taxation in Ohio and to be returned by the applicant and that the true value of the property in question was as determined and assessed for each of the years in question.

Being further advised in the premises, the Tax Commissioner finds that, he, being an administrative official and a creature of statute, has neither jurisdiction nor authority for finding the assessments in question as being violative of either the Ohio or United States Constitutions. It is the further finding of the Tax Commissioner that additional charges of 17½% were erroneously assessed for the years 1948 to 1957, inclusive, and are hereby set aside. In all other respects, including the assessment of additional charges for the years 1958 to 1960, inclusive, the Tax Commissioner finds the assessment here under review to be proper and correct.

It is, therefore, the final order of the Tax Commissioner that corrected assessment certificates be issued for the years 1948 to 1957, inclusive, to reflect the findings made in this journal entry and that the assessments for the years 1958 to 1960, inclusive, be as determined and assessed.

Department of Taxation, Stanley J. Bowers, Tax Commissioner.

I hereby certify the foregoing to be a true and correct copy of the action of the Department of Taxation this day taken by the Tax Commissioner with respect to the above matter.

Stanley J. Bowers, Tax Commissioner.

[fol. 6]

BEFORE THE BOARD OF TAX APPEALS

DEPARTMENT OF TAXATION, STATE OF OHIO

No. 9170

In the matter of the application of RESERVE LIFE INSURANCE COMPANY, a foreign insurance company, Dallas, Texas, for review and redetermination of increased personal property tax assessment for the year 1961.

FINAL ORDER—December 1, 1961

This proceeding, being the application of Reserve Life Insurance Company, a foreign insurance company, Dallas, Texas, for review and redetermination of an increased personal property tax assessment for the year 1961, after being duly heard, came on to be considered.

Upon audit, an increased personal property tax assessment was made against property of the applicant, which property was determined by the Department to be taxable under Schedule 4 of the return for the year in question. The applicant filed an application for review and redetermination pursuant to the provisions of Section 5711.31,

Revised Code, objecting to the assessments as made and contending that: (1) the taxing and insurance statutes of the State of Ohio should be read together so as to be consistent, and if this is done the personal property of Reserve Life Insurance Company in the State of Ohio has a value of zero; (2) the personal property tax, as applied to foreign insurance companies, is unconstitutional under Article I, Section 2 of the Ohio Constitution, as the tax is not levied on domestic insurance companies; and, (3) the personal property tax, as applied to foreign insurance companies, is unconstitutional under the equal protection clause of Section 1 of the Fourteenth Amendment to the United States Constitution, as the tax is not levied on domestic insurance companies.

Upon consideration of the information submitted at and subsequent to the hearing, Sections 5701.03, 5709.01, 5711.01, 5711.03, 5711.18 and 5711.22, Revised Code, Department of Taxation Rule 202, and all other available information, the Tax Commissioner finds applicant's first contention is not well taken; that the property in question is subject to taxation in Ohio and to be returned by the applicant; and that the true value of the property in question was as determined and assessed for the year in question.

Being further advised in the premises, the Tax Commissioner finds that, he, being an administrative official and a [fol. 7] creature of statute, has neither jurisdiction nor authority for finding the assessment in question as being violative of either the Ohio or United States Constitutions. Accordingly, the Tax Commissioner finds no error in the assessment here under review.

Finding no error in the assessment here under review, it is the finding of the Tax Commissioner that this assessment be, and the same hereby is, affirmed.

Department of Taxation, Stanley J. Bowers, Tax Commissioner.

I hereby certify the foregoing to be a true and correct copy of the action of the Department of Taxation this day

taken by the Tax Commissioner with respect to the above matter.

Stanley J. Bowers, Tax Commissioner.

[fol. 8]

BEFORE THE BOARD OF TAX APPEALS

DEPARTMENT OF TAXATION, STATE OF OHIO

No. 48267

RESERVE LIFE INSURANCE COMPANY, 403 South Akard Street, Dallas 2, Texas,

v.

STANLEY J. BOWERS, Tax Commissioner, State of Ohio, Ohio Departments of State Building, Columbus, Ohio.

STIPULATION OF FACTS—Offered April 3, 1962

It is hereby stipulated that, for the purposes of this case, the following statements may be accepted as facts; provided, however, that either party may introduce other and further evidence not inconsistent with the facts herein stipulated.

1. Reserve Life Insurance Company (hereinafter sometimes referred to as "Reserve") is a legal reserve life insurance company, organized and existing under the laws of the State of Texas. It is a stock company and is owned by its stockholders.

2. Reserve does business in the District of Columbia and all states of the United States except Connecticut, Massachusetts, Michigan, New Jersey, New York and Rhode Island. It first began doing business in Ohio in the fall of 1947, and has continued ever since.

3. Since it began doing business in the State of Ohio, Reserve has annually filed a Statement of Condition as of December 31 of each year, in accordance with Section [fol. 9] 3909.06 of the Revised Code of Ohio, and has com-

plied with all regulations of the Department of Insurance of the State of Ohio. It has paid its franchise tax annually.

4. Reserve has never paid a personal property tax to the State of Ohio. No request was directed to Reserve to pay such a tax until 1959. Reserve promptly raised the question of the applicability and constitutionality of the personal property tax law as applied to it, but supplied the Department of Taxation with valuation of its furniture and fixtures owned by it in the State of Ohio on January 1 for the years 1948 through 1960.

5. If the final determination of this controversy is that the personal property tax on furniture and fixtures is due from Reserve to the State of Ohio, the parties agree that the valuations supplied by Reserve to the State of Ohio for the years 1948 through 1960, by counties, are correct. In this event, the matter shall be referred to the Tax Commissioner for a proper breakdown of the property by taxing districts, reserving to Reserve full rights of appeal as to the property assigned by the Tax Commissioner to each taxing district.

Dinsmore, Shohl, Barrett, Coates & Deupree, Attorneys for Reserve Life Insurance Company, By Harris K. Weston.

Mark McElroy, Attorney General—State of Ohio, Attorney for Stanley J. Bowers, Tax Commissioner—State of Ohio, By John J. Lokos, Assistant Attorney General.

[fol. 10]

BEFORE THE BOARD OF TAX APPEALS

DEPARTMENT OF TAXATION, STATE OF OHIO

No. 48268

RESERVE LIFE INSURANCE COMPANY, 403 South Akard Street, Dallas 2, Texas,

v.

STANLEY J. BOWERS, Tax Commissioner, State of Ohio, Ohio Departments of State Building, Columbus, Ohio.

STIPULATION OF FACTS—Offered April 3, 1962

It is hereby stipulated that, for the purposes of this case, the following statements may be accepted as facts; provided, however, that either party may introduce other and further evidence not inconsistent with the facts herein stipulated.

* * * * * * *

[fol. 11] 4. Reserve has never paid a personal property tax to the State of Ohio. No request was directed to Reserve to pay such a tax until 1959. Reserve promptly raised the question of the applicability and constitutionality of the personal property tax law as applied to it, but supplied the Department of Taxation with valuation of its furniture and fixtures owned by it in the State of Ohio on January 1 for the year 1961.

5. If the final determination of this controversy is that the personal property tax on furniture and fixtures is due from Reserve to the State of Ohio, the parties agree that the valuations supplied by Reserve to the State of Ohio for the year 1961, by counties, are correct. In this event, the matter shall be referred to the Tax Commissioner for a proper breakdown of the property by taxing districts, re-

serving to Reserve full rights of appeal as to the property assigned by the Tax Commissioner to each taxing district.

Dinsmore, Shohl, Barrett, Coates & Deupree, Attorneys for Reserve Life Insurance Company, By Harris K. Weston.

Mark McElroy, Attorney General, State of Ohio, Attorney for Stanley J. Bowers, Tax Commissioner—State of Ohio, By John J. Lokos, Assistant Attorney General.

[fol. 12]

BEFORE THE BOARD OF TAX APPEALS

DEPARTMENT OF TAXATION

STATE OF OHIO

Case Nos. 48267 and 48268
(Personal Property)

RESERVE LIFE INSURANCE COMPANY, 403 South Akard Street, Dallas 2, Texas, Appellant,

vs.

STANLEY J. BOWERS, Tax Commissioner of Ohio, Appellee.

ENTRY—July 17, 1962

Appearances:

For the Appellant—Harris K. Weston, c/o Dinsmore, Shohl, Barrett, Coates and Deupree, 12th Floor, Union Central Building, Cincinnati 2, Ohio.

For the Appellee—Mark McElroy, Ohio Attorney General, by John J. Lokos, Assistant.

This cause and matter came on to be considered by the Board of Tax Appeals upon two notices of appeal filed

herein under date of January 2, 1962, by the appellant above-named from two final orders of the Tax Commissioner dated December 1, 1961 (Case No. 48268) and December 19, 1961 (Case No. 48267), in and by which final orders that official confirmed an increased tangible personal property tax assessment theretofore made by him against the appellant corporation for the years 1948 through 1960, inclusive (Case No. 48267) and the year 1961 (Case No. 48268).

[fol. 13] The matters were consolidated for hearing and, as thus consolidated, the matter was submitted to the Board of Tax Appeals upon the notices of appeal, the statutory transcripts supplied by the Tax Commissioner, the stipulations of fact agreed to by counsel for the parties, the statements of counsel made at the hearing before the Board of Tax Appeals in Columbus, Ohio, on April 3, 1962, and the briefs filed by counsel.

The stipulation of fact in Case No. 48267 reads as follows:

> "It is hereby stipulated that, for the purposes of this case, the following statements may be accepted as facts; provided, however, that either party may introduce other and further evidence not inconsistent with the facts herein stipulated.
>
> "1. Reserve Life Insurance Company (hereinafter sometimes referred to as 'Reserve') is a legal reserve life insurance company, organized and existing under the laws of the State of Texas. It is a stock company and is owned by its stockholders.
>
> "2. Reserve does business in the District of Columbia and all states of the United States except Connecticut, Massachusetts, Michigan, New Jersey, New York and Rhode Island. It first began doing business in Ohio in the fall of 1947, and has continued ever since.
>
> "3. Since it began doing business in the State of Ohio, Reserve has annually filed a Statement of Condition as of December 31 of each year, in accordance with Section 3909.06 of the Revised Code of Ohio, and has complied with all regulations of the Department of

Insurance of the State of Ohio. It has paid its franchise tax annually.

"4. Reserve has never paid a personal property tax to the State of Ohio. No request was directed to Reserve to pay such a tax until 1959. Reserve promptly raised the question of the applicability and constitutionality of the personal property tax law as applied to it, but supplied the Department of Taxation with valuation of its furniture and fixtures owned by it in the State of Ohio on January 1 for the years 1948 through 1960.

[fol. 14] "5. If the final determination of this controversy is that the personal property tax on furniture and fixtures is due from Reserve to the State of Ohio, the parties agree that the valuations supplied by Reserve to the State of Ohio for the years 1948 through 1960, by counties, are correct. In this event, the matter shall be referred to the Tax Commissioner for a proper breakdown of the property by taxing districts, reserving to Reserve full rights of appeal as to the property assigned by the Tax Commissioner to each taxing district."

The stipulation in Case No. 48268 is identical with that in Case No. 48267, with the exception that in paragraphs 4 and 5 the words "for the year 1961" appear in place of the words "for the years 1948 through 1960."

As noted in the stipulation of fact the appellant is a "foreign life insurance company" and, as such, is required to file annually with the Ohio Superintendent of Insurance a statement of its condition and affairs (Revised Code Sections 3907.19 and 3909.06). For the years here in question the appellant filed the required statement with the Ohio Superintendent of Insurance and in each statement there was no monetary value placed upon appellant's tangible personal property (furniture and equipment) located in Ohio and used by the appellant in its Ohio business activities.

The appellant filed no Ohio personal property tax returns for the years in question and the Tax Commissioner,

being of the opinion that tangible personal property located in Ohio and used by a foreign insurance company in its business in Ohio is subject to ad valorem property tax in Ohio, proceeded to issue the assessments here in issue and to subject to Ohio taxation the furniture and equipment of appellant located in Ohio at a value supplied [fol. 15] to the Tax Commissioner, at his request, by the appellant, and which values the Tax Commissioner accepted as being the "true value in money" thereof.

The issues raised in this matter may be stated as follows:

(1) Is the appellant an Ohio "taxpayer" within the definition of that word as found in Revised Code Section 5711.01 (B)?

(2) Does the Tax Commissioner have authority to revalue the furniture and equipment of a foreign insurance company at its true value in money for Ohio personal property tax purposes and to thereby disregard a zero valuation placed upon said furniture and equipment by the insurance company in a statement filed with the Ohio Superintendent of Insurance, in which statement it was required that said furniture and equipment be assigned a zero valuation?

(3) Is such a tax levied against personal property of a "foreign insurance company" constitutional under the Constitution of the State of Ohio and the Constitution of the United States of America when "domestic insurance companies" are excluded from the definition of "taxpayer" under the provisions of Revised Code Section 5711.01 (B), and when the tangible personal property of a "domestic insurance company" is excluded from Ohio taxation by virtue of the provisions of Revised Code Section 5725.25?

The Board of Tax Appeals has jurisdiction and authority to decide the first two questions presented, but, being a quasi-judicial body and a creature of the statute, it is limited to the powers with which it is thereby invested and it has no jurisdiction to declare a statute unconstitutional.

Therefore, no opinion will be herein expressed with respect to the merits of appellant's claim as noted in question 3.

The pertinent portion of Revised Code Section 5711.01 reads as follows:

[fol. 16] "As used in sections 5711.01 to 5711.41, inclusive, of the Revised Code:

"(A) • • •

"(B) 'Taxpayer' means any owner of taxable property and includes every person residing in, or incorporated or organized by or under the laws of this state, or doing business in this state, or owning or having a beneficial interest in taxable personal property in this state and every fiduciary required by sections 5711.01 to 5711.41, inclusive, of the Revised Code to make a return for or on behalf of another. The tax commisssioner may by regulations define and designate the taxpayer, as to any taxable property which would not otherwise be required by this section to be returned; and any such regulation shall be considered supplementary to the enumeration of kinds of taxpayers following:

"(1) • • •

"(2) • • •

"(3) • • •

" 'Taxpayer' excludes all individuals, partnerships, corporations, associations, and joint-stock companies, their executors, administrators, and receivers who are defined in Title LVII of the Revised Code as financial institutions, dealers in intangibles, domestic insurance companies, or public utilities, except to the extent they may be required by sections 5711.01 to 5711.41, inclusive, of the Revised Code, to make returns as fiduciaries. • • • "

On November 18, 1957, the Tax Commissioner of Ohio, pursuant to the authority given to him by the provisions

of Revised Code Section 5711.01 (B), adopted Rule No. 211, the pertinent portion of which Rule reads as follows:

> "Foreign insurance companies are hereby designated as taxpayers within the meaning of Section 5711.01, of the Revised Code, so as to require such foreign insurance companies to return tangible personal property subject to taxation under the laws of Ohio. This enumeration of foreign insurance companies as taxpayers is made under the authority granted the Tax Commis- [fol. 17] sioner in Section 5711.01 of the Revised Code, to define and designate the taxpayer as to any taxable property which would not otherwise be returned."

It is thus clear that the taxing statutes are drawn so as to include foreign insurance companies doing business in Ohio as "taxpayers" under the personal property tax laws of Ohio and the first question must, therefore, be answered in the affirmative.

The pertinent portion of Revised Code Section 5711.18, which section sets up the method for valuing tangible personal property used in business for tax purposes, reads as follows:

> "* * *. In the case of personal property used in business, the book value thereof less book depreciation at such time shall be listed, and such depreciated book value shall be taken as the true value of such property, unless the assessor finds that such depreciated book value is greater or less than the then true value of such property in money. * * *."

It has become well established in Ohio that a "taxpayer" may, under the provisions of Revised Code Section 5711.18, list its tangible personal property on its tax return at its depreciated book value and that this value will prevail unless, and until, the Tax Commissioner exercises the prerogative given to him by the provisions of Revised Code Section 5711.18 to revalue the taxpayer's tangible personal property at what the Tax Commissioner considers to be its true value in money.

From the many cases that have been presented to it, the Board of Tax Appeals knows that many taxpayers depreciate their assets on their books of account at a rate which will reduce the book values thereof to zero even though the assets are still used in business and have many [fol. 18] years of useful life remaining. It is also well known that many corporations are granted, by the Federal Government, the right to use an accelerated depreciation rate for income tax purposes and to completely write off, on their books, the cost of capital assets in from three to five years even though the assets themselves will be in use for twenty-five years or more. We are also familiar with the fact that many Federal and State regulatory bodies require that asset valuation statements filed with them by persons or corporations under their jurisdiction be ultra-conservative. This is done to protect those members of the public who have dealings with said persons or corporations and is not done in any way to establish the actual value of the property for tax purposes.

In the case now before us, and even if it were to be assumed that the zero valuation given by the appellant to its furniture and equipment in its statement filed with the Superintendent of Insurance was, in fact, the "book value" of said property, it is obvious that the Tax Commissioner, in exercising the authority given to him by Revised Code Section 5711.18 to redetermine the value of tangible personal property for ad valorem tax purposes, is not required to accept the "book value" thereof, as the true value in money any more than he is bound to accept a particular "book value" which is permitted, or even required, by the Bureau of Internal Revenue or any other Federal, State or local department or bureau.

[fol. 19] The second question must, therefore, be answered in the affirmative.

Giving effect to the observations and conclusions above-noted, and again noting that this Board has no authority to declare a statute unconstitutional, the final orders of the Tax Commissioner herein complained of must be, and hereby are, affirmed, and this matter is remanded to the Tax Commissioner with instructions to that official to com-

ply with the provisions of the last paragraph of the stipulation, as agreed to by the parties.

I hereby certify the foregoing to be a true and correct copy of the action of the Board of Tax Appeals of the Department of Taxation this day taken with respect to the above matter.

James E. Henry, Secretary.

[fol. 20]

IN THE COURT OF APPEALS FOR HAMILTON COUNTY, OHIO

FIRST APPELLATE DISTRICT

HAMILTON COUNTY, No. 9222

RESERVE LIFE INSURANCE COMPANY, Appellant,

vs.

STANLEY J. BOWERS, Tax Commissioner of Ohio, Appellee.

Appeal on Questions of Law, From the Board of Tax Appeals, State of Ohio.

Messrs. Dinsmore, Shohl, Barrett, Coates & Deupree, Union Central Building, Cincinnati, Ohio, for Appellant,

Messrs. William B. Saxbe and Daronne R. Tate, State House Annex, Columbus, Ohio, for Appellee.

OPINION--June 10, 1963

Hover, P.J.

This is an appeal from the Board of Tax Appeals. The Board determined appellant was subject to taxation on its personal property used in business. This finding approved ruling of the Tax Commissioner based upon his Rule No. 211 (November 18, 1957), stating in effect that foreign insur-[fol. 21] ance companies are required to make a return of their tangible personal property pursuant to the general taxing statutes of the State of Ohio.

The appellant is Reserve Life Insurance Company organized and existing under the laws of Texas. It is a stock company and has been authorized to conduct an insurance business in the state of Ohio since 1949. Appellant has heretofore claimed and now claims that the tax in question is not authorized by the statutes of Ohio; and that if authorized and levied, is violative of both the state and federal constitutions.

The matter is before this Court by virtue of Section 5717.04 of the Revised Code, which section provides the manner and form of proceedings to obtain a review of decisions of the Board of Tax Appeals.

The Tax Commissioner has filed a motion to dismiss the appeal on the ground that the statute above does not authorize this taxpayer to bring his action in the Court of Appeals for the First Appellate District of Ohio. The taxpayer, in support of his right to appeal to this Court, submits an affidavit to the effect that it maintains a regional executive office in Cincinnati, Ohio; that this office handles all of the company's business conducted in Ohio and various other named states; and that Cincinnati, Ohio is the principal place of business in Ohio for the company. The Tax Commissioner contends that any appeal by a foreign insurance corporation must be either directed to the Supreme [fol. 22] Court of Ohio or to the Court of Appeals for Franklin County. The company contends that it is a corporation and as such may appeal to the Court of Appeals for the county in which the corporation has its principal place of business in this state.

The problem is controlled by the Revised Code Section 5717.04 which, in its pertinent portion, reads as follows: "The proceeding to obtain a reversal, vacation, or modification of a decision of the board of tax appeals shall be by appeal to the supreme court or the court of appeals for the county in which the property taxed is situate or in which the taxpayer resides. If the taxpayer is a corporation, then the proceeding to obtain such reversal, vacation, or modification shall be by appeal to the supreme court or to the court of appeals for the county in which the property taxed is situate, or the county of residence of the agent for service of process, tax notices, or demands, or the county

in which the corporation has its principal place of business. In all other instances, the proceeding to obtain such reversal, vacation or modification shall be by appeal to the court of appeals for Franklin county."

The obvious intent of the legislature in enacting this statute in its present form must be considered. Previously, all appeals from the Board of Tax Appeals were taken directly to the Supreme Court, resulting in an undue burden upon that court. The intent of the statute is clearly to spread the burden of tax appeal litigation. It would seem the in- [fol. 23] stant appeal to this Court is proper on two grounds —(1), at least a portion, and probably the bulk, of the property taxed is situated in this Appellate District; and (2), the corporation does have its principal place of business for the state of Ohio in this District. The provision for bringing tax appeals into the Court of Appeals for Franklin County is obviously intended as a "catch all" for instances not otherwise provided. The multiplicity of conflicting appeals feared by appellee is answered, in regard to corporations at least, by the statutory provision for combined corporate returns where property is held in more than one county.

For the above reasons, appellee's motion to dismiss the appeal is not well taken and is hereby overruled.

As to the merits of the appeal, it is obvious that appellant is a taxpayer of the state of Ohio as to this specific tax. Section 5711.01 Revised Code includes corporations generally doing business in the state of Ohio. The same section specifically excludes certain businesses from the definition of "taxpayer". Domestic insurance companies are excluded but are noted as "otherwise taxed".

Section 5709.01 of the Revised Code provides that all personal property located and used in business in this state is subject to taxation. Appellant is thus a taxpayer who is liable for a tax upon his personal property used in [fol. 24] business in this state. The mere fact that for other purposes peculiar to the insurance business, such personal property is not regarded either as an "asset" or as an "investment" does not affect the clear intention of the legislature to tax the personal property used in business of

a foreign insurance corporation authorized to do business in this state.

The specific rule No. 211 of the Tax Commissioner merely restates the law as the statute shows it to be. It would seem to be superfluous since the authority of the Commissioner to define and designate taxpayers is limited to "any taxable property which would not otherwise be required by this section to be returned". As already demonstrated, the section in question defines appellant as a taxpayer, and his property used in business is "taxable property" under these statutes.

Appellant further suggests the argument that it is already taxed by virtue of Section 5729.02 of the Revised Code at a higher rate of taxation than that levied as a similar tax against competing domestic insurance companies. While appellant admits there is nothing unlawful or unconstitutional in this practice, nevertheless, it should be noted in passing that the foreign company is not, under any circumstances, subject to the possibility of a tax upon its entire capital and surplus as is a domestic corporation.

Appellant, however, claims further that the tax upon his personal property is discriminatory and, as such, unconstitutional since this particular tax is not levied against domestic companies.

[fol. 25] If the tax structures with which we are here concerned involve a constitutional question it is not, as already observed, a problem created by Rule No. 211 of the Tax Commissioner. The tax on the personal property of appellant is levied by virtue of statutory enactments which are applicable to all corporations except those excluded by definition in Section 5711.01 (B) of the Revised Code. This exclusion (which is not an exemption because the excluded activities are otherwise taxed) concerns not only domestic insurance companies but other types of businesses where a direct ad valorem personal property tax not only may be neither practical nor just, but also otherwise provided. This is particularly true as regards domestic insurance companies, vis-a-vis foreign companies.

The power to determine the subject and methods of taxation in Ohio within broad constitutional limitations

(excepting real estate), is in the General Assembly by virtue of Article One of the Constitution, and Article Twelve Section Two thereof. This includes the power to effect reasonable tax classifications (State Ex Rel. Struble v. Davis, 132, O.S. 555, and related cases). This applies as well to the power to exempt personal property from taxation.

In regard to the appellant taxpayer and the tax levied against his personal property and not directly against that [fol. 26] of a domestic insurance company, it cannot be said that the General Assembly has specifically provided for any exemption in this respect. On the contrary, it is provided in Section 5725.18 of the Revised Code that such domestic companies shall be taxed according to the lesser of the two methods and by Section 5725.25 that the tax so levied shall be in lieu of other property taxes, except those upon real estate. Section 5725.18 of the Revised Code taxes either the capital and surplus of domestic insurance companies which of necessity includes a tax on all property actually owned by the company or, in the alternative, a tax upon gross premiums originating in the state. This is the same tax base provided as a franchise tax for foreign insurance companies. The net result is that the question of whether or not this particular tax is discriminatory against this particular taxpayer is not the controlling factor, the applicable principle being whether or not a specific tax is discriminatory between permissible classifications of taxpayers. Whether or not this particular tax system results in tax discrimination in the very narrow sense of one taxpayer paying more than another individual taxpayer, becomes a matter of mathematical calculation individual by individual,—a calculation in which courts are not constitutionally required or even permitted to indulge. The problems existing between foreign and domestic insurance companies in respect of methods and rates of taxation, are recognized by Section 5729.06 of the Revised Code [fol. 27] relative to retaliatory tax rates. Here again it would seem that whether or not a particular tax discriminates as between foreign and domestic taxpayers would involve, in addition, a consideration of the tax structure of the state of which the foreign corporation is a resident.

In City of Xenia v. Schmidt, 101 O. S. 438, the court considers the relationship between the constitutional guarantee of "equal protection of the laws" and the legislative authority to classify. The court states the controlling principle thusly: "The test, derived from the doctrines announced in both federal and state courts relative to classification, is this: Is there a real and substantial distinction in the classification attempted, or is it merely artificial, arbitrary or fictitious, made for the purpose of avoiding constitutional requirements? . . . These classifications, so far as they relate to such substantial distinctions, have always been upheld as within the constitutional provisions: Such has not only been the understanding and application in the courts of law, but likewise in the court of the common people in their daily transactions."

Under all the circumstances apparent in the record here, it cannot be considered that the imposition of an ad valorem tax on the tangible personal property of a foreign insurance company and otherwise taxing domestic insurance companies by the lesser of two formulae is an improper or unlawful classification of taxpayers or discriminatory either for or against the foreign company.

[fol. 28] Finally, it is difficult to see how the complaining taxpayer here could lawfully be granted the relief he seeks. Certainly this may not be done by declaring him to be exempt from the particular tax complained of,—distinguishing him from corporate taxpayers generally. Neither this Court nor the Tax Commissioner is authorized to effect tax exemptions by adding words to a statute. Conversely, in order to require domestic insurance companies to pay this tax would involve declaring two separate and distinct statutes unconstitutional. This the Court might, under some circumstances, be able to do by holding invalid the "in lieu" provision of Section 5725.25 of the Revised Code, but the Court may not itself legislate alleged equality by levying a tax against taxpayers (domestic insurance companies) where no such tax is now levied by the only body constitutionally authorized to do so, i.e., the General Assembly. (Compare Allied Stores v. Bowers, 166 O.S. 117.)

Accordingly, it is the opinion of the Court, (1) that the personal property used in business of the appellant tax-

payer is subject to listing and to taxation on the ad valorem basis provided by the general property tax law; and, (2) that the taxing distinction existing between domestic and foreign insurance companies is neither an unreasonable classification of taxpayers nor can it be said to discriminate either in favor of or against the two types of insurance companies; nor, under such circumstances, can it be held [fol. 29] violative of the equal protection clause of the constitution.

The decision of the Board of Tax Appeals is hereby affirmed.

Hildebrant and Long, JJ., concur.

[fol. 30]

IN THE COURT OF APPEALS FOR HAMILTON COUNTY, OHIO

FIRST APPELLATE DISTRICT

No. 9222

RESERVE LIFE INSURANCE COMPANY, Appellant,

vs.

STANLEY J. BOWERS, Tax Commissioner of Ohio, Appellee.

JOURNAL ENTRY—Entered July 18, 1963

This cause came on to be heard as an appeal from the Board of Tax Appeals and was submitted to the Court upon the certified transcript of the record of the proceedings before said Board, and the briefs and arguments of counsel.

Upon consideration whereof the Court finds:

1) The motion of appellee, Stanley J. Bowers, Tax Commissioner of Ohio, is not well taken.

2) The decision of the Board of Tax Appeals is neither unreasonable nor unlawful.

3) The personal property tax upon the Reserve Life Insurance Company does not violate the Constitution of the State of Ohio nor the Constitution of the United States.

It is therefore ordered, adjudged and decreed that the aforesaid motion of appellee to dismiss the appeal herein [fol. 31] be, and the same hereby is, overruled. It is further ordered, adjudged and decreed that the decision of the Board of Tax Appeals be, and the same hereby is, affirmed.

The costs herein are taxed against appellant.

To all of which appellant excepts.

It is further ordered that a special mandate issue to the Board of Tax Appeals to carry this judgment into execution.

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Approved:

Dinsmore, Shohl, Barrett, Coates & Deupree, By Harris K. Weston, Attorneys for Appellant.

William B. Saxbe, Attorney General; Daronne R. Tate, Assistant Attorney General; Attorneys for Appellee.

[fol. 32]

IN THE SUPREME COURT OF THE STATE OF OHIO

Case No. 38415

RESERVE LIFE INSURANCE Co., Appellant,

v.

STANLEY J. BOWERS, Tax Commr., Appellee.

Dinsmore, Shohl, Barrett, Coates & Deupree; Harris K. Weston, Union Central Building, Cincinnati, Ohio.

William B. Saxbe, Daronne R. Tate; State House Annex, Columbus, Ohio.

Appeal from the Court of Appeals for Hamilton County.

Motion for an order directing the Court of Appeals of Hamilton County to Certify its Record.

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[fol. 34]

JOURNAL ENTRIES—January 22, 1964

* * * * * * *

JUDGMENT

Journal 46, Page 218

Appeal from the Court of Appeals for Hamilton County.

This cause, here on appeal as of right from the Court of Appeals for Hamilton County was heard in the manner prescribed by law and upon motion of the appellee to dismiss such appeal.

On consideration thereof, such appeal is dismissed for the reason that no substantial constitutional question exists herein.

It is further ordered that the appellee recover from the appellant his costs herein expended; that a mandate be sent to the Court of Appeals to carry this judgment into

execution; and that a copy of this entry be certified to the Clerk of the Court of Appeals for Hamilton County for entry.

[fol. 35] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF OHIO

No. 38415

RESERVE LIFE INSURANCE COMPANY, Appellant,

vs.

STANLEY J. BOWERS, Tax Commissioner of Ohio, Appellee.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed March 20, 1964

I. Notice is hereby given that Reserve Life Insurance Company, the Appellant above named, hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of Ohio dismissing the appeal of Appellant from the Court of Appeals, First Appellate District, State of Ohio, entered in this cause on January 22, 1964. Said dismissal was "for the reason that no substantial constitutional question exists herein." This appeal is taken pursuant to 28 U.S.C.A., Section 1257(2).

II. The Clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the entire record, plus the opinion of the Court of Appeals, First Appellate District, State of Ohio.

III. The following question is presented by this appeal:

The Tax Commissioner of the State of Ohio, acting pursuant to Ohio statutes, assessed a personal property tax for the years 1948 through 1961 inclusive upon Appellant,

a foreign insurance company duly qualified to transact business in Ohio. The statutes of Ohio do not impose said personal property tax upon insurance companies incorporated in Ohio. The validity of this assessment was sustained by the Board of Tax Appeals, the Court of Appeals, [fol. 36] First Appellate District, State of Ohio, and by the Supreme Court of Ohio. The constitutionality of said tax under the Fourteenth Amendment to the Constitution of the United States was raised before the Tax Commissioner, and at each subsequent hearing. Thus, the question presented by this appeal is:

Whether the decision of the Supreme Court of Ohio, upholding the validity of statutes of the State of Ohio, particularly Sections 5711.01, 5711.18, 5711.22, and 5725.25 of the Ohio Revised Code of Ohio, imposing a personal property tax on Appellant, a foreign insurance company, when said personal property tax is not imposed on Ohio insurance companies, is correct, when the validity of said statutes was questioned on the ground that they were repugnant to the Fourteenth Amendment to the Constitution of the United States, and in particular Section 1 thereof.

Dinsmore, Shohl, Barrett, Coates & Deupree, Attorneys for Reserve Life Insurance Company, Appellant, By Harris K. Weston, 12th Floor Union Central Building, Cincinnati 2, Ohio.

[fol. 37] Certificate of Service (omitted in printing).

[fol. 38] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF OHIO

No. 38415

RESERVE LIFE INSURANCE COMPANY, Appellant,

vs.

STANLEY J. BOWERS, Tax Commissioner of Ohio, Appellee.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed March 20, 1964

I. Notice is hereby given that Reserve Life Insurance Company, the Appellant above named, hereby appeals to the Supreme Court of the United States from the final judgment of the Court of Appeals, First Appellate District, State of Ohio, affirming the decision of the Board of Tax Appeals, entered in this cause on July 18, 1963.

Appellant timely filed a notice of appeal to the Supreme Court of Ohio and a motion to certify the record of said cause to said Court. On January 22, 1964, the Supreme Court of Ohio overruled the Motion to Certify the Record, and on the same date dismissed the appeal "for the reason that no substantial constitutional question exists herein."

This appeal is taken pursuant to 28 U.S.C.A., Section 1257(2).

II. The Clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the entire record, plus the opinion of the Court of Appeals, First Appellate District, State of Ohio.

III. The following question is presented by this appeal:

The Tax Commissioner of the State of Ohio, acting pursuant to Ohio statutes, assessed a personal property tax for the years 1948 through 1961 inclusive upon Appellant,

a foreign insurance company duly qualified to transact business in Ohio. The statutes of Ohio do not impose said personal property tax upon insurance companies incorpo- [fol. 39] rated in Ohio. The validity of this assessment was sustained by the Board of Tax Appeals and by the Court of Appeals, First Appellate District, State of Ohio. The constitutionality of said tax under the Fourteenth Amendment to the Constitution of the United States was raised before the Tax Commissioner, and at each subsequent hearing. Thus, the question presented by this appeal is:

Whether the decision of the Court of Appeals, First Appellate District, State of Ohio, upholding the validity of statutes of the State of Ohio, particularly Sections 5711.01, 5711.18, 5711.22, and 5725.25 of the Ohio Revised Code of Ohio, imposing a personal property tax on Appellant, a foreign insurance company, when said personal property tax is not imposed on Ohio insurance companies, is correct, when the validity of said statutes was questioned on the ground that they were repugnant to the Fourteenth Amendment to the Constitution of the United States, and in particular Section 1 thereof.

Dinsmore, Shohl, Barrett, Coates & Deupree, Attorneys for Reserve Life Insurance Company, Appellant, By Harris K. Weston, 12th Floor, Union Central Building, Cincinnati 2, Ohio.

[fol. 40] Certificate of Service (omitted in printing).

[fol. 41]

SUPREME COURT OF THE UNITED STATES

No. 96—October Term, 1964

RESERVE LIFE INSURANCE COMPANY, Appellant,

vs.

STANLEY J. BOWERS, Tax Commissioner of Ohio.

ORDER NOTING PROBABLE JURISDICTION—October 12, 1964

Appeal from the Supreme Court of the State of Ohio.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is placed on the summary calendar.